

SHAPIRO, CROLAND, REISER

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In re:	:	UNITED STATES BANKRUPTCY COURT
	:	DISTRICT OF NEW JERSEY
	:	
HASHAM R. SYED AND	:	
NIGHAT SYED,	:	Chapter 13
	:	
Debtors.	:	Case No. 22-17137(VFP)
	:	
	:	Hearing Date: February 2, 2023

**OBJECTION OF SOLA REALTY LLC TO
CONFIRMATION OF DEBTORS' AMENDED PLAN**

Sola Realty LLC ("Sola") hereby objects to the Amended Plan filed by Hasham Syed ("Debtor No. 1") and Nighat Syed ("Debtor No. 2" and collectively with Debtor No. 1 referred to as "Debtors") on December 29, 2022 [Document No. 37] and, in support of its objection, respectfully says:

I. BACKGROUND

1. Sola obtained a judgment against Debtor No. 1 on April 4, 2022 in the amount of \$98,199.99 plus interest (the "Sola Judgment"). The Sola Judgment was docketed with the Superior Court of New Jersey on April 14, 2022. A copy of the Sola Judgment is attached as Exhibit A to the objection of Sola to Confirmation of Plan filed on November 7, 2022 (the "Sola Objection") [Document No. 21].

2. The Debtors filed a voluntary petition under chapter 13 of the Bankruptcy Code on September 8, 2022.

3. Debtor No. 1's principal asset is a property located at 54 Saw Mill Road, Kinnelon, New Jersey (the "Property"), which he purchased in August 2021 for \$1.1 million pursuant to the Deed attached as Exhibit B to the Sola Objection [Document No. 21]. The Property is subject to a mortgage lien in the amount of \$793,330.40 in favor of AmWest Funding Corp.

4. Debtor No. 1 values the Property at \$950,000 based upon an appraisal as of September 29, 2022. A copy of the appraisal is attached as Exhibit C to the Sola Objection [Document No. 21].

5. Pursuant to an appraisal obtained by Sola, attached as Exhibit D to the Sola Objection [Document No. 21], the Property has a value of \$1,030,000 as of October 18, 2022.

6. Debtors' Amended Schedule I [Document No. 41] shows monthly income of \$16,142.46 consisting of \$12,604.94 in gross income of Debtor No. 1, \$937.52 in net income of Debtor No. 2 and family support payments of \$2,600.

7. Debtor No. 1's monthly gross income is derived from Prestige Linen & Essentials LLC ("Prestige"), a company which his son, Zeshan Syed, allegedly owns. The monthly income of Debtor No. 1 is equal to the net income of Prestige for 2022 as set forth in a Profit & Loss Statement of Prestige. A copy of the Profit & Loss Statement is annexed hereto as Exhibit A. The Profit & Loss Statement reflects no wages and, upon information and belief, Debtors have not provided bank statements or other financial records of Prestige to corroborate the 2022 net income.

8. Upon information and belief, Zeshan Syed is also the family member who will provide Debtors with \$2,600 of monthly income to fund the Plan, in part.

9. Debtors' Amended Schedule J shows monthly expenses, without any itemization of any tax expense for the Debtors' monthly gross earnings from Prestige of \$12,604.94 and totaling \$151,259.28 annually.

10. In addition, Debtor's Schedule J reflects exorbitant expenses of \$1,200 per month for vehicle insurance and \$1,500 for vehicle debt service payments on a 2020 Range Rover. The

secured claim of JP Morgan Chase with respect to this vehicle loan is not affected by the Plan.

II. THE PLAN

11. Debtors' Plan proposes to make 3 monthly payments of \$450 beginning October 1, 2022 and monthly payments of \$3,500 beginning January 1, 2023 for 57 months for a total of \$200,850 over a period of five years.

12. The payments to be made by Debtors pursuant to their Plan will be funded from the monthly amounts Debtor No. 1 allegedly receives from Prestige, Debtor No. 2's employment and family support of \$2,600 per month.

13. The Plan proposes to pay creditors the following amounts:

- a. Chapter 13 Standing Trustee commissions as allowed;
- b. Debtors' attorneys' administrative claim as allowed;
- c. priority tax claims totaling \$53,868.36;
- d. secured claims of the State of New Jersey and AmWest Funding Corp. totaling \$46,997; and
- e. the balance pro rata to unsecured claims.

14. The Plan also provides for the Judgment lien of Sola to be avoided pursuant to section 544 of the Bankruptcy Code.

III. OBJECTIONS TO CONFIRMATION OF THE PLAN

A. Debtor No. 1 Cannot Avoid The Judgment Lien Of Sola

15. The Sola Judgment lien is a lien against the Property. N.J.S.A. 2A:16-1.

16. Unlike section 522 of the Bankruptcy Code which grants a debtor the right to avoid a judgment lien which impairs a debtor's exemption in accordance with section 522(f), a chapter 13 debtor does not have standing to use the avoiding powers under section 544(a) of the Bankruptcy Code.¹ Instead, courts have held that section 1303 of the Bankruptcy Code does not grant a debtor such avoidance powers and only the trustee can exercise such powers. In Re

¹ For reasons explained in the Sola Objection, the Sola Judgment lien is not avoidable pursuant to section 522(f).

Knapper, 407 F.3d 573, 583 (3d Cir. 2005); In Re Hannah, 316 B.R. 57, 61 (Bankr. D.N.J. 2004); (Chapter 13 debtor cannot obtain derivative standing to pursue avoidance action). In Re Steck, 298 B.R. 244 (Bankr. D.N.J. 2003).

17. Therefore, the Plan must provide for the Sola Judgment lien to be treated as a secured claim and paid in full, which it does not. Accordingly, the Plan should not be confirmed.

B. The Plan Is Not Feasible.

18. Section 1325(a)(6) of the Bankruptcy Code requires that, in order to confirm a plan, a debtor must show that he or she will be able to make all payments under the plan and to comply with the plan.

19. Here, the Debtors have failed to show that the contributions proposed to be made by their family member of \$2,600 per month are sufficiently stable and regular so as to permit Debtors to make the payments required under the Plan. In Re Andolino, 525 B.R. 588 (Bankr. D.N.J. 2015).

20. Although Debtors have provided a 1099 statement showing payments of \$100,568.48 received by an entity known as ZMZ Liquidations LLC from Amazon no personal financial information, including expenses and debt of the Plan funder, have been provided from which a determination can be made that he can fund monthly contributions of \$2,600 to Debtors.

21. Indeed, to the extent the Plan funder is Zeshan Syed, Schedule H shows he is a co-debtor to BMW Financial Service for a debt of \$13,880, a co-debtor to JP Morgan Chase for a debt of \$85,940 and a co-debtor to Bennett Wain for an undetermined amount. There is no evidence that the Plan funder will have sufficient income after payment of his own expenses and obligations, to pay \$2,600 per month under the Plan.

22. In addition, Debtors' amended schedules fail to reflect any expense for income tax debt, including with regard to the substantial \$151,248 per year that it is asserted will be earned by Debtor No. 1 from his employment with Prestige.


23. Utilizing an effective federal and state income tax rate aggregating 25% would result in \$37,812 yearly and \$3,151 in monthly tax liability for Debtor No. 1 leaving monthly net

income of \$366.52, which is significantly less than the \$3,500 per month Debtors propose to pay under the Plan beginning January 1, 2023.

24. Finally, the prospect of Debtor No. 1 earning \$151,259.28 in gross wages annually from Prestige is not adequately documented by the 2022 Prestige Profit & Loss Statement and has not been corroborated by bank records.

WHEREFORE, Sola respectfully requests that the Court deny confirmation of Debtors' Amended Plan and grant such and other further relief as is equitable and just.

SHAPIRO, CROLAND, REISER,
APFEL & DI IORIO, LLP
Attorneys for Creditor, Sola Realty LLC

By: 
John P. Di Iorio

Dated: January 25, 2023

EXHIBIT A

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Accrual Basis

PRESTIGE LINEN & ESSENTIALS LLC
Sales by Customer Summary
January 1 through December 18, 2022

	<u>Jan 1 - Dec 18, ...</u>
ACC PRODUCTS LLC	8,487.50
ALL AMERICAN IMPORTS CORP	3,700.00
AMERICA SUPPLY, INC.	13,910.40
ATLANTIC MILLS INC.	3,552.10
DR. ABID RIZVI	850.00
GRAINS & SEEDS INTERNATIONAL L...	7,500.00
HERITAGE PHARMACY	32,240.00
MARSHALL DRY GOODS CO.	202,874.75
MYLETEX INTERNATIONAL INC.	203,996.10
NJ TEXTILES	945.00
RUCKLE MFG CORP.	83,099.52
SODHI	9,212.00
TRADE LINKER INTERNATIONAL	28,755.00
UNIQUE TRADING LLC	4,200.00
WALKERS MILLS LLC	10,000.00
ZARA STICHING SERVICES LLC	1,400.00
ZECRON TEXTILES, INC.	2,880.00
TOTAL	<u>617,602.37</u>

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12/26/22

Accrual Basis

PRESTIGE LINEN & ESSENTIALS LLC
Sales by Customer Summary
January through December 2022

	Jan 22	Feb 22	Mar 22	Apr 22	May 22	Jun 22	Jul 22
ACC PRODUCTS LLC	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ALL AMERICAN IMPORTS CORP	0.00	0.00	0.00	0.00	0.00	0.00	0.00
AMERICA SUPPLY, INC.	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ATLANTIC MILLS INC.	0.00	0.00	0.00	0.00	0.00	0.00	0.00
DR. ABID RIZVI	0.00	850.00	0.00	0.00	0.00	0.00	0.00
GRAINS & SEEDS INTERNATIONAL L...	0.00	0.00	0.00	0.00	0.00	0.00	0.00
HERITAGE PHARMACY	0.00	2,148.00	9,045.00	4,219.00	0.00	4,212.00	0.00
MARSHALL DRY GOODS CO.	0.00	0.00	0.00	0.00	40,089.75	40,205.25	0.00
MYLETIX INTERNATIONAL INC.	0.00	0.00	0.00	0.00	0.00	0.00	108,201.45
NJ TEXTILES	0.00	945.00	0.00	0.00	0.00	0.00	0.00
RUCKLE MFG CORP.	0.00	0.00	0.00	0.00	83,099.52	0.00	0.00
SODHI	0.00	0.00	0.00	0.00	9,212.00	0.00	0.00
TRADE LINKER INTERNATIONAL	0.00	28,755.00	0.00	0.00	0.00	0.00	0.00
UNIQUE TRADING LLC	0.00	0.00	0.00	0.00	0.00	0.00	0.00
WALKERS MILLS LLC	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ZARA STICHING SERVICES LLC	0.00	0.00	0.00	0.00	0.00	0.00	0.00
ZECRON TEXTILES, INC.	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL	0.00	32,698.00	9,045.00	4,219.00	132,401.27	44,417.25	108,201.45

INVENTORY IN
 (AS of Dec 28, 2022)

120 PARK AVE, LYNDBURST NJ WHSE APPROX \$20,000

SECAUCUS NJ WHSE \$40,000

VALUE \$

\$60,000

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Accrual Basis

PRESTIGE LINEN & ESSENTIALS LLC
Sales by Customer Summary
January through December 2022

	Aug 22	Sep 22	Oct 22	Nov 22	Dec 22	TOTAL
ACC PRODUCTS LLC	0.00	0.00	0.00	0.00	8,487.50	8,487.50
ALL AMERICAN IMPORTS CORP	0.00	0.00	0.00	3,700.00	0.00	3,700.00
AMERICA SUPPLY, INC.	0.00	0.00	0.00	13,910.40	0.00	13,910.40
ATLANTIC MILLS INC.	0.00	0.00	0.00	3,552.10	0.00	3,552.10
DR. ABID RIZVI	0.00	0.00	0.00	0.00	0.00	850.00
GRAINS & SEEDS INTERNATIONAL L...	0.00	0.00	7,500.00	0.00	0.00	7,500.00
HERITAGE PHARMACY	0.00	7,100.00	4,056.00	1,460.00	0.00	32,240.00
MARSHALL DRY GOODS CO.	0.00	0.00	0.00	122,579.75	0.00	202,874.75
MYLETIX INTERNATIONAL INC.	0.00	0.00	95,794.65	0.00	0.00	203,996.10
NJ TEXTILES	0.00	0.00	0.00	0.00	0.00	945.00
RUCKLE MFG CORP.	0.00	0.00	0.00	0.00	0.00	83,099.52
SODHI	0.00	0.00	0.00	0.00	0.00	9,212.00
TRADE LINKER INTERNATIONAL	0.00	0.00	0.00	0.00	0.00	28,755.00
UNIQUE TRADING LLC	0.00	0.00	0.00	0.00	4,200.00	4,200.00
WALKERS MILLS LLC	0.00	0.00	10,000.00	0.00	0.00	10,000.00
ZARA STICHING SERVICES LLC	0.00	0.00	1,400.00	0.00	0.00	1,400.00
ZECRON TEXTILES, INC.	0.00	0.00	0.00	2,880.00	0.00	2,880.00
TOTAL	0.00	7,100.00	118,750.65	148,082.25	12,687.50	617,602.37

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12/26/22

Accrual Basis

PRESTIGE LINEN & ESSENTIALS LLC
Sales by Customer Summary
February 2022

	<u>TOTAL</u>
DR. ABID RIZVI	850.00
HERITAGE PHARMACY	2,148.00
NJ TEXTILES	945.00
TRADE LINKER INTERNATIONAL	<u>28,755.00</u>
TOTAL	<u>32,698.00</u>

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12/26/22

Accrual Basis

PRESTIGE LINEN & ESSENTIALS LLC
Sales by Customer Summary
March 2022

	<u>TOTAL</u>
HERITAGE PHARMACY	<u>9,045.00</u>
TOTAL	<u>9,045.00</u>

5:15 PM

12/26/22

Accrual Basis

PRESTIGE LINEN & ESSENTIALS LLC
Sales by Customer Summary
April 2022

	<u>TOTAL</u>
HERITAGE PHARMACY	<u>4,219.00</u>
TOTAL	<u>4,219.00</u>

5:16 PM

12/26/22

Accrual Basis

PRESTIGE LINEN & ESSENTIALS LLC
Sales by Customer Summary
May 2022

	<u>TOTAL</u>
MARSHALL DRY GOODS CO.	40,089.75
RUCKLE MFG CORP.	83,099.52
SODHI	<u>9,212.00</u>
TOTAL	<u>132,401.27</u>

5:16 PM

12/26/22

Accrual Basis

PRESTIGE LINEN & ESSENTIALS LLC
Sales by Customer Summary
June 2022

	<u>TOTAL</u>
HERITAGE PHARMACY	4,212.00
MARSHALL DRY GOODS CO.	<u>40,205.25</u>
TOTAL	<u>44,417.25</u>

5:16 PM

12/26/22

Accrual Basis

PRESTIGE LINEN & ESSENTIALS LLC
Sales by Customer Summary
July 2022

	<u>TOTAL</u>
MYLETEX INTERNATIONAL INC.	<u>108,201.45</u>
TOTAL	<u><u>108,201.45</u></u>